COURT NO.2

THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Appeal from Order No. 341 of 2003

Ram Kumar … **Appellant**

Versus

Judge, Family Court
Hardwar and another. …. **Respondents.**

Sri Navneet Kaushik, Advocate, learned counsel for the appellant,
Sri Anil Bisht & Sri Tumul Nainwal, learned counsel for respondent no.2

Coram: Hon'ble P.C. Verma, J.
Hon'ble B.S. Verma, J.

This appeal has been preferred by husband Ram Kumar against the order dated 16-09-2003 passed in Misc. Case No. 77 of 2002, Ram Kumar Vs. Smt. Neelam, by the Judge, Family Court, Hardwar ***(in short the Judge)*** whereby the application of the applicant Ram Kumar filed under order 9, Rule 13 of the Code of Civil Procedure for setting aside the judgment and decree dated 31-5-2002 in Original Suit No. 205 of 2002 has been rejected with costs.

Brief facts of the case are that the respondent no.2 Smt. Neelam filed a suit against the husband-appellant under Section 11 of the Hindu Marriage Act for declaring the marriage between the parties as null and void alleging therein that that the appellant has solemnized marriage with her on 18-5-2001 by fraud; that the appellant on the pretext that he is unmarried and by giving his forged name and address as Dinesh son of Sri Pal, resident of Meerut; that on 29-05-2001, she came to know that the appellant's correct name is Ram Kumar son of Rahtu Lal, resident of village Dhakdevi, P.S. Nakur, district Saharanpur and he has a living wife named Kamesh Devi and two children; that thereafter, the parents of the respondent no.1 Neelam wanted to contact the appellant;

but he absconded and was not traceable, therefore, the petition has been filed under Section 11 of the Act for declaring the marriage between the parties null and void. The opposite party-appellant did not appear before the learned Judge and the case proceeded ex-parte against the appellant. Ultimately, the learned Judge vide judgment and order dated 31-5-2002 decreed the suit of the respondent no.1 thereby declaring the marriage between the parties as null and void. Subsequently, on 1-7-2002 the appellant moved application under Order 9, Rule 13 C.P.C. for setting aside the ex-parte decree dated 31-5-2002 before the learned Judge, which was registered as Misc. Case No. 77 of 2002. This application was contested by the respondent no. 1, Smt. Neelam, who field objections before the learned Judge on 28-3-2003. After hearing both the parties, the learned Judge has come to the conclusion that the appellant has concealed factum of his first marriage and has solemnized the marriage with the respondent no.1 having his wife alive along with two children. Ultimately, the learned Judge has rejected the application of the appellant vide judgment and order dated 16.9.2003. Aggrieved, the appellant has come up on appeal before this Court.

We have heard learned counsel for both the parties and have gone through the entire material on record.

It has been contended on behalf of the appellant that the impugned judgment and order dated 16-09-2003 passed by the learned Judge is against the evidence on record and that the learned trial court has erred in not considering the illness of the appellant, therefore, the judgment and order under appeal is liable to be set aside. We have considered the entire material before us. The submission of the learned counsel is totally misconceived. In the application under Order 9, Rule 13 C.P.C., the appellant has asserted that 22-2-2002 was fixed for filing of written statement and on 28-5-2002, he suffered

due to pain in his hand and he could not appear before the court on 31.5.2002. This assertion of the appellant goes to the root of the matter that he has not come with clean hands before the Court below. There is nothing to indicate as to what has prevented him to appear between the period 22.2.2002 till 31.5.2002 has not at all been explained. It is interesting to note that in this application the dates typed on the application have been corrected when the respondent no.1 has disputed the dates in her objection. It appears that the appellant however managed to obtain medical certificate regarding alleged illness w.e.f. 28-5-2002 till 30-6-2002. The application under Order 9, Rule 13 CPC has been admittedly moved on 1-7-2002. From the record, it is evident that the appellant has sought time to file written statement on 22.2.2002, which was allowed and 15.3.2002 was fixed in the case. The learned counsel for the appellant could not explain as to why the appellant could not appear before the court below on 15.3.2002 to prosecute his case till 28-5-2002, i.e. the date on which he allegedly suffered pain in his hand.

The most important aspect of this case is that in the judgment and order dated 31-5-2002 it has been observed by the court below that Criminal Case No.844 of 2001 was initiated against the appellant in the Court of Addl. C.J.M. Sagharnapur and this fact has been proved by the respondent no.1 before the learned Judge. The appellant could not lead any evidence before the learned Judge to show that no complaint was filed against him before the Criminal Court for bigamy or that Criminal Case No. 844 of 2001 of the court of Addl. Saharanpur did not relate to him. From a perusal of the entire record, we find that the appellant has concealed material facts relating to matrimonial case. The learned Judge has considered all aspect of the case. The learned counsel for the appellant could not indicate any circumstance favorable to the appellant, so as to warrant interference with the impugned

judgment and order dated 31-5-2002 or 16-9-2003. The judgment and orders, under appeal, do not suffer from any illegality or infirmity. Accordingly, we are not inclined to find favour with the appellant in this appeal, which is liable to be dismissed.

In the result, the appeal is dismissed. The impugned judgment and order dated 31-5-2002 and 16-9-2003 are hereby upheld. No order as to costs.

30-9-2004 **(B.S. Verma, J.) (P.C. Verma, J.)**
RCP